

# FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS  
COMMISSION  
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In Re Applications of: ) MM DOCKET No.: 97-77  
)  
GREATER WASHINGTON EDUCATION ) File No.: BPED-930617MD  
TELECOMMUNICATIONS )  
ASSOCIATION, INC. )  
Channel 219B )  
Leonardtown, Maryland )  
)  
For Construction Permit for a )  
New Noncommercial Educational )  
FM Station )  
)  
COLUMBIA UNION COLLEGE ) File No.: BPED-930723MB  
BROADCASTING, INC. )  
Channel 220B )  
Takoma Park, Maryland )  
)  
For Modification of )  
Facilities of Station WGTS-FM )  
Takoma Park, Maryland )

Volume: 1  
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Date: April 15, 1997

## HERITAGE REPORTING CORPORATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Courtroom 2  
Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Tuesday,  
April 15, 1997

The parties met, pursuant to the notice of the  
Judge, at 9:00 a.m.

BEFORE: HON. RICHARD L. SIPPEL  
Administrative Law Judge

Heritage Reporting Corporation  
(202) 628-4888

## APPEARANCES:

On behalf of Greater Washington Education  
Telecommunications Association, Inc.:

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On Behalf of Columbia Union College Broadcasting,  
Inc.:

BRUCE A. EISEN, ESQ.  
Kaye, Scholer, Fierman, Hays & Handler  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 682-3538

On behalf of the Commission:

JACQUELINE E. ELLINGTON, ESQ.  
JAMES SHOOK, ESQ.  
Federal Communications Commission  
Mass Media Bureau  
Enforcement Division  
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Suite 8210  
Washington, D.C. 20554  
(202) 418-1430

I N D E X

WITNESS:

PAGE

None.

Hearing Began: 9:00 a.m.

Hearing Ended: 9:21 p.m.

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1                                P R O C E E D I N G S

2                    JUDGE SIPPEL: This our first prehearing  
3 conference, so I'm going to ask counsel to please identify  
4 themselves in the docket order. Please, starting with  
5 Greater Washington Education.

6                    MR. GRAY: Your Honor, good morning. I'm Todd  
7 Gray. With me is Margaret Miller. And also observing is  
8 Tom Livingston, from WETA.

9                    JUDGE SIPPEL: All right. Good morning.  
10 And on behalf of Columbia Union?

11                   MR. EISEN: Bruce Eisen; Kaye, Scholer, Fierman,  
12 Hays & Handler, on behalf of Columbia Union College  
13 Broadcasting, Inc.

14                   JUDGE SIPPEL: Do you have a notice of appearance  
15 in this case?

16                   MR. EISEN: Oh, yes, Your Honor. It was filed on  
17 the tenth, and you were served with a copy of it.

18                   JUDGE SIPPEL: Okay, well, my legal tech is out  
19 sick today and --

20                   MR. EISEN: Ah.

21                   JUDGE SIPPEL: -- and it may not have gotten into  
22 my work files. That's all right.

23                   VOICE: It just came in the mail.

24                   JUDGE SIPPEL: I'll take your representation on  
25 it. That's all we need to do. And with respect to the

1 Bureau?

2 MS. ELLINGTON: Jacqueline Ellington, Your Honor.

3 JUDGE SIPPEL: Okay.

4 MR. SHOOK: And James Shook.

5 JUDGE SIPPEL: All right. Good morning.

6 MR. SHOOK: Good morning.

7 MS. ELLINGTON: Good morning.

8 JUDGE SIPPEL: The notices of appearance are no  
9 longer filed by the Bureau, is that right? According to the  
10 order -- the order doesn't specify the Bureau as a party  
11 that would file a notice of appearance.

12 MR. SHOOK: We never have, Your Honor. We just  
13 show up.

14 JUDGE SIPPEL: Okay. Glad to have you.

15 MR. SHOOK: Thank you.

16 JUDGE SIPPEL: The joint hearing report was  
17 submitted yesterday, and it's been very helpful. It looks  
18 like, if everything gets done in accordance with that  
19 schedule, that this hearing should be pretty smooth sailing.  
20 I didn't notice anything that was of particular concern  
21 there.

22 I would ask that there be some diligence with  
23 respect to identifying -- or, at least agreeing, rather, on  
24 the common engineer, so that that person can get immediately  
25 working on the, you know, on the project. And, of course,

1 the Bureau's technical staff, particularly, should be  
2 involved with that as much as possible and as early as  
3 possible.

4 It seems to me that, from the report, that if the  
5 case is going to be resolved, the most likely way it would  
6 be resolved would be a technical solution, as opposed to a  
7 share time.

8 Does anybody want to comment on that? I mean, I'm  
9 talking about for scheduling purposes particularly.

10 MR. GRAY: I -- I guess I would say that I agree  
11 with your -- with your impressions. We have discussed, at  
12 this point, at least one name of a -- for a common engineer.  
13 And, ah, we will be needing to -- to discuss that a little  
14 further. But, as I indicated in the report, I -- we are  
15 confident that we will be able to agree on someone soon and  
16 get that person moving.

17 JUDGE SIPPEL: All right. Well, I think what I'm  
18 going to do is, I had set -- I'm sorry, Mr. Shook, did you  
19 have something?

20 MR. SHOOK: Yes. Generally, Your Honor, we like a  
21 -- about a three-week period between, ah, say, a preliminary  
22 exchange and then the final exchange, so that our engineers  
23 have adequate time to review the exhibit.

24 JUDGE SIPPEL: Well --

25 MR. SHOOK: Whatever -- whatever period you set,

1 try to factor in roughly three weeks for that.

2 JUDGE SIPPEL: Well, I've got a -- procedural  
3 dates have already been set in the prehearing conference  
4 order. And I've got a date of June 23.

5 MR. EISEN: Yes. Are -- are those dates actually  
6 the, ah, final word, or we can request in any way?

7 JUDGE SIPPEL: Well, there's -- there would be  
8 some -- if reasons are given, there would be some  
9 adjustments. I mean, people have to schedule their lives.  
10 And, you know, I'd like to hear something about that right  
11 away, if you have it.

12 MR. SHOOK: I see what you have here, Your Honor,  
13 and that's more than adequate.

14 JUDGE SIPPEL: All right. But, well, my comment  
15 was with respect -- even when they first get the -- when  
16 they get the common engineer on board, that it would make  
17 sense that there be some preliminary contacts with your  
18 technical staff so that they know where they're -- just so  
19 they know where they're going.

20 MR. EISEN: Yeah, and I would say, Your Honor, I  
21 don't think that's going to be a problem at all. We will,  
22 ah, identify a common engineer, I'm confident, very shortly.  
23 And, of course, there'll be interaction with the Bureau's  
24 staff, and I'm sure within the time frame that Mr. Shook  
25 has, ah, just noticed.



1 JUDGE SIPPEL: Well, that's fine. Then, I will  
2 have nothing to worry about. That's what -- I've very happy  
3 to hear it that way.

4 Then, I will stay, unless, you know -- I would ask  
5 you to -- well, let me -- let me set a date. Let me set a  
6 date. May 15 is the date that was in the status report as  
7 to when documents could be exchanged. Am I correct? I read  
8 that right, didn't I?

9 MR. GRAY: Yes, Your Honor.

10 JUDGE SIPPEL: Why don't we stay with that May 15  
11 date and forget about the -- I had set a date of April 21  
12 for a -- to file a schedule with respect to document  
13 production. That, it seems to me, would not be a necessary  
14 procedural step, since you've committed to the May 15 as an  
15 exchange date.

16 And on that date, I'd also want -- what I want on  
17 that date is a status report saying that the exchange has  
18 gone forward and that you do have a common engineer. It  
19 doesn't have to be identified, but that you do have it.

20 And I will set May 15 as the date, the last date,  
21 for any changes to the procedural dates. In other words,  
22 any time between now and May 15, if for some reason, some  
23 good reason, these dates -- it would be in the interest of a  
24 party or several -- or, more than one party.

25 Let me say it another way. If you all can agree

1 to other dates that don't vary too much from this and, you  
2 know, there's a reason for doing it, I'll change the dates.  
3 But I want to set May 15 as being the cutoff on that,  
4 unless, again, there's something, you know, extraordinary  
5 that happens.

6 Does that clear it up and does that satisfy  
7 anybody? Everybody? (No audible response.) Yes, everybody  
8 seems to be in agreement on that.

9 I have Greater Washington's amendment, which was  
10 required by the hearing designation order. I've received no  
11 opposition to it.

12 Did the Bureau -- this is an amendment that was  
13 directed to be filed by the hearing designation order, so I  
14 would expect that I would need to see anything on this.

15 MR. SHOOK: We've looked at it, and we have no  
16 problem with it.

17 JUDGE SIPPEL: All right, then. Having -- hearing  
18 no objection, the petition for the amendment is granted.  
19 The amendment is accepted. And I'll note that in an  
20 appropriate order shortly after the conference.

21 The only thing else that I have that I wanted to  
22 address was the share time issue. And what I want to do  
23 is -- is state my concerns to the Bureau that if the case  
24 cannot be resolved for some reason, on a technical solution,  
25 and there has to be, you know, a final litigated resolution

1 with respect to the 307(b) issue, that time share issue is  
2 still in there. And I'm going to have to rule on it.

3 I mean, in other words, there has to be -- there  
4 has to be some -- or, it has to be addressed in some way, is  
5 what I'm saying. And I would expect the Bureau to  
6 participate in that as well.

7 The answer might be that 307(b), one of the  
8 parties can convince -- has a convincing case on 307(b), so  
9 that there's no need to get at the time share. But the  
10 issue isn't stated that way in the hearing designation  
11 order. In other words, it's not said -- it doesn't set it  
12 out that way, that, in the event you can't resolve the case  
13 under 307(b), you go to time share.

14 As I'm reading the hearing designation order, both  
15 remedies have to be viewed as whether which would be the  
16 appropriate, which is going to give the greatest public  
17 interest relief in the case?

18 So, I want the Bureau to focus on that the way  
19 that I'm focusing on it, so that it can be -- it can be  
20 appropriately handled when it comes time for proposed  
21 findings, or however -- or, even if it's a settlement, so  
22 that we can dispose of it.

23 Any questions on that? None?

24 MR. SHOOK: No, Your Honor.

25 JUDGE SIPPEL: Then, that's all that I have.

1 MR. EISEN: Would it be better to go off the  
2 record, or would you rather have us file something with  
3 regard to the procedural dates?

4 JUDGE SIPPEL: Well --

5 MR. EISEN: Because I -- I do have a couple of  
6 difficulties with some of the dates. I apologize for that  
7 I'm -- I'm late into the case.

8 JUDGE SIPPEL: Well, let's see what we can resolve  
9 off the record. That's fine.

10 MR. EISEN: Okay.

11 JUDGE SIPPEL: I mean, I'll stay here with you for  
12 a while on that.

13 Let's go off the record for a minute.

14 (Whereupon, at 9:15 a.m., the proceeding was  
15 briefly recessed.)

16 (Whereupon, at 9:20 a.m., the proceeding was  
17 resumed.)

18 JUDGE SIPPEL: In an off the record discussion,  
19 it's been tentatively agreed -- well, it's been agreed to  
20 consider two changes in the procedural dates. One, the  
21 exchange and receipt date would be moved from August 1 to  
22 August 5. And the commencement of the hearing would be  
23 moved from August 13 to August 26.

24 This is subject to verification of no conflict  
25 with counsel for -- on the part of Greater Washington's

1 counsel. And I have to check my own calendar, too.

2 And we should have this resolved by the end of the  
3 week.

4 All right? That's it, then. We are in recess.

5 Thank you very much.

6 ALL: Thank you.

7 (Whereupon, at 9:21 a.m., the proceeding was  
8 concluded.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 97-77  
CASE TITLE: Greater Washington Education  
HEARING DATE: April 15, 1997  
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 4/15/97

Vercountess Grady  
Official Reporter  
Heritage Reporting Corporation  
1220 "L" Street, N.W.  
Washington, D.C. 20005  
Vercountess Grady

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 4.16.97

Gary A. Sabel  
Official Transcriber  
Heritage Reporting Corporation  
Gary A. Sabel

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 4-17-97

Don R. Jennings  
Official Proofreader  
Heritage Reporting Corporation  
Don R. Jennings